violates the constitutional provision that an individual in a criminal case cannot be compelled to be a witness against himself. *People* v. *Reardon*, 197 N. Y. 236.

Cooley on Constitutional Limitations, 5th ed., p. 369, *304, says (note 1):

> "The scope of this work does not call for any discussion of the searches of private premises, and seizures of books and papers, which are made under the authority, or claim of authority, of the revenue laws of the United States. Perhaps, under no other laws are such liberties taken by ministerial officers; and it would be surprising to find oppressive action on their part so often submitted to without legal contest, if the facilities they possess to embarrass, annoy and obstruct the merchant in his business were not borne in mind. The federal decisions, however, go very far to establish the doctrine that, in matters of revenue, the regulations Congress sees fit to establish, however unreasonable they may seem, must prevail."

If Judge Cooley were now alive he would see the law vindicated and its violations rebuked, as shown by the above decisions.

Hence it may well be questioned whether the La Follette amendment would have been constitutional. It was not to get information for legislation, inasmuch as Congress cannot levy an income tax on interest from state or municipal bonds. It has too remote a bearing upon a possible constitutional amendment, especially as the states will not voluntarily by such an amendment increase the rate of interest on their bonds and make the federal government a present of that increase; neither will they vote for such an amendment unless it is reciprocal and allows them to tax the income from federal bonds.

The mere fiat of Congress that such information must be given would, of course, not be conclusive. In the tax case of *Eisner* v. *Macomber*, 252 U. S. 189, the court said (page 206): "Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

EVIDENCE—PROOF REQUIRED TO ADMIT BOOKS OF ACCOUNT.—"Now they [negotiable instruments] are not goods, nor securities, nor documents for debts, nor are so esteemed, but are treated as money, as cash, in the ordinary course and transactions of business, by the general consent of mankind, which gives them the credit and currency of money to all intents and purposes." Lord Mansfield in *Miller* v. *Race*, 1 Burrows 452. By a process something like that by which the negotiability of promissory notes and bills of exchange became recognized in the law of contracts, the rules of evidence seem to be accommodating themselves to the necessities and customs of trade.

"A shop-book was allowed in evidence in indebitatus assumpsit, in a taylor's bill, it being proved that the servant that writ the book was dead, and this was his hand, and he accustomed to make the entries, and no proof was

required of the delivery of the goods." 12 VIN. ABR. 89. This of course applies when the one making the entry had personal knowledge of the transaction. The same rule is followed in *Sovereign Camp W. O. W.* v. *Bass,* 204 Ala. 28.

It is when the one making the entry had no personal knowledge of the truth of the transactions recorded, but made them from the reports of other employees who delivered the goods or performed the services, that the courts have experienced difficulties, leading to various rules as to when such accounts are admissible. "Evidence of beer delivered was this, the draymen came every night to the clerk of the brewhouse, and gave him account of the beer they had delivered out, to which the draymen set their hands, and that the drayman was dead, but that his hand was set to the book. And that was held good evidence of a delivery." *Price* v. *Torrington,* 2 Ld. Raym. 873. If the transactor is unavailable, dead, insane, or, in some jurisdictions, permanently in another jurisdiction, the entries are admissible if the entrant is able to testify that the entries were made by him in the regular course of business, and that they are correct reproductions of the reports made. There is agreement that these extra-judicial statements are admissible because the circumstances of necessity and the guaranty of trustworthiness entitle them to be received in evidence as exceptions to the hearsay rule. *Nichols* v. *Webb,* 8 Wheat. 326; *Poole* v. *Dicas,* 1 Bing. N. C. 649.

There is a type of unavailability which the nature of modern business has created. It is that where an entry is made only after a series of transactions, each perhaps requiring the attention of a different employee of the party who desires to put the final record, which constitutes the original entry, in evidence. The unavailability of those having personal knowledge of the several transactions culminating in the items may be said roughly to spring from these causes: (1) the transactors are unknown; (2) the transactors are a transient class, often gone when the record is produced in court; (3) there is impracticability in taking a number of employees from their shop duties to be witnesses.

In *Kent* v. *Garvin,* 1 Gray (Mass.) 148, the clerk who kept the book testified that it was a book of original entries, that the one who delivered the goods habitually reported to him from memoranda made at the time, and that the witness copied these reports into the book offered in evidence. The transactor was absent from the jurisdiction. For the want of his testimony, the books were held inadmissible, the court using this language: "It is manifest that an important link in the chain of evidence is wanting. The clerk who made the entries had no knowledge of the correctness of any charge on the book. The case therefore rests on the mere unsupported evidence of a third person, whose fidelity and accuracy there are no means of ascertaining and testing. It is in its nature mere hearsay testimony." It is not enough, then, in the opinion of the Massachusetts court, to show that the record was fairly kept under circumstances which naturally would make it accurate. This rule is again applied in *Delaney* v. *Framingham Gas, Fuel and Power Co.,* 202 Mass. 359; *Atlas Shoe Co.* v. *Bloom,* 209

Mass. 563; *Kaplan* v. *Gross,* 223 Mass. 152. It should be noticed that there was not a strong case of unavailability presented in *Kent* v. *Garvin, supra,* for apparently there were but two employees; also a deposition could have been gotten from the absent person. This was not true of *Kaplan* v. *Gross, supra,* yet the court refused to depart from the precedent. See, too, *Mansfield* v. *Gushee* (Me., 1921), 114 Atl. 296.

The usual practical impossibility of bringing those persons into court from whose personal knowledge and reports another, whose duty it was, wrote them in the book of original entries, has induced other courts to lay down a still different rule of admissibility for book accounts. It is enough in such jurisdictions to show that the account book offered was made in the regular course of business, if the system of making the entries was explained and it appeared that accuracy would probably follow from it. The elements of necessity and trustworthiness—always to be found before extra-judicial statements are admissible—were deemed to be present.

Among the pioneer cases in which this more liberal rule was adopted was *Givens* v. *Pierson's Admx.,* 167 Ky. 574. The bookkeeper of a large establishment testified that as a clerk made a sale he entered it on a ticket, from which the witness would copy the transaction on the books. The bookkeeper had no other knowledge of the transactions; he could say nothing as to the correctness of the items made on the tickets by the clerks. To admit the books as evidence of the transaction, no other proof was required than to show the method used in making them, and to identify them. It was immaterial, the court said, whether or not those who made the memoranda on the tickets could be brought into court to testify. The demands of modern business for such a rule were expressly stated as causing this decision. "And so this change in business methods has made necessary the broadening of the rule admitting book entries as substantive evidence, and now the test of the admissibility of this class of evidence does not depend so much on whether the entry offered in evidence was made on a permanent book at the time the transaction actually occurred by the clerk who attended to it as it does on the fact that it was made in the usual manner in which the business is conducted, although the entry may be made by a person whose only information is gained from the tickets furnished him by the clerks or other persons who actually attended to the business," said the court. See also, *White Sewing Machine Co.* v. *Gilmore Furniture Co.,* 128 Va. 630; *Seaboard Air Line Ry. Co.* v. *R. R. Commissioners,* 86 S. C. 91; *Loveman, Joseph & Loeb* v. *McQueen,* 203 Ala. 280; *Bush* v. *Taylor,* 136 Ark. 554; *Montgomery & Mullen Lumber Co.* v. *Ocean Park Scenic Ry.,* 32 Cal. App. 32. In the last case, the books were allowed in evidence when one who was familiar with the method of keeping them testified as to that, and identified the books. In *Gallatin Co. Farmers' Alliance* v. *Flannery,* 59 Mont. 534, this was held to be error, since the bookkeeper was available as a witness. The former holding is undoubtedly correct; anyone with knowledge of these facts should be allowed to testify to them.

What may be considered a further liberalization of the rule is found in

the late case of *Billingsley* v. *U. S.* (C. C. A., 1921), 274 Fed. 86. The books were identified by the witness Levy, who assisted in keeping them; this witness also acted as a salesman and testified that he had sold goods to the defendants. But it does not appear that he had any personal knowledge that the goods entered in the books had been delivered to the defendant. He also said that the books were kept in the regular course of business. The court said: "These books were properly kept * * * in the regular course of business by a person employed for that purpose. It was wholly unimportant whether the witness Levy made any or all the entries therein or not, and equally unimportant whether or not he had any recollection in reference to particular sales." The requirement here is less than that of cases following *Givens* v. *Pierson's Admx., supra,* in that no description of the method of keeping the books was required. This should be demanded by the courts. There is a possibility that under such a lenient rule of admissibility as in the *Billingsley* case self-serving documents may be introduced in evidence. Compelling the party offering the book to explain the system by which it is kept places no unreasonable burden upon him and at the same time affords the court a fair opportunity of deciding upon the trustworthiness of the book.

The courts in the main have met a changed situation well, and in changing a rule of evidence to meet altered circumstances have made a concrete application of the words of Chief Justice Shaw in *Norway Plains Co.* v. *B. & M. R. R. Co.,* 1 Gray (Mass.) 263: "It is one of the great merits and advantages of the common law that instead of a series of detailed practical rules * * * the common law consists of a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it. * * * When new practices spring up, new combinations of fact arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle applicable to cases most nearly analogous, but modified and adapted to new circumstances by considerations of fitness and propriety, of reason and justice, which grow out of these circumstances." G. E. L.

MARITIME LAW—PERSONALITY OF SHIP—IMMUNITY OF GOVERNMENT PROPERTY.—The recent opinions of the Supreme Court in the three cases of the *Western Maid, Liberty,* and *Carolinian* (U. S. Sup. Ct., January 3, 1922) emphasize the non-liability of national ships in cases of collision. The *Western Maid,* owned by the United States and manned by the navy, was in collision in New York harbor. The *Liberty* was a pilot boat under charter to the government and had a collision in the harbor of Boston. The *Carolinian,* also a chartered ship, had done similar damage in Brest, France. The two latter had been re-delivered to the owners, and the former to the U. S. Shipping Board, when the libels were filed, so that the process in no way interfered with the possession of the sovereign. In each case the Supreme Court issued its extraordinary writ of prohibition to prevent district courts from exercising jurisdiction.